

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA
SEP 12 2017
PETER W. WISNIA
CLERK

JASON SWIGER, <i>et al.</i> , on behalf)	CASE NO.: 1:15-cv-02196
of themselves and others similarly)	
situated,)	
)	CHIEF JUDGE CHRISTOPHER C.
Plaintiffs,)	CONNER
)	
vs.)	
)	<u>FINAL ORDER APPROVING</u>
UTZ QUALITY FOODS, INC.)	<u>CLASS ACTION SETTLEMENT</u>
)	<u>AGREEMENT AND JUDGMENT</u>
Defendant.)	<u>ENTRY</u>

Rule 23 Class Representatives Julio Cruz, Julia Williams, Tom Holt, and Nicholas DeRose (“Rule 23 Class Representatives”) and Defendant Utz Quality Foods, Inc. (“Defendant” or “Utz”) have moved the Court to approve, as fair and reasonable, a Class Action Settlement Agreement (“Settlement Agreement”) between Rule 23 Class Representatives and Defendant pursuant to Fed. R. Civ. P. 23(e).

Having reviewed the Settlement Agreement, as well as the Parties’ Joint Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”), the Parties Joint Motion for Final Approval of Class Action Settlement, the Declarations of Anthony J. Lazzaro and Hans A. Nilges, the exhibits thereto, and the pleadings and papers on file in this Action, and for good cause

established therein, the Court enters this Order granting final approval of the Rule 23 Class Action Settlement as follows:

1. Unless otherwise defined, all terms used in this Final Order have the same meanings as defined in the Settlement Agreement.

2. On September 15, 2015, Brian Jurden (“Mr. Jurden”), an individual, on behalf of himself and others similarly situated, filed this Action as a collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219 against Defendant Utz Quality Foods, Inc. (“Utz”) in the United States District Court for the Southern District of Ohio, Case No. 2:15-cv-2833.

3. On September 22, 2015, the Complaint was amended to include Jason Swiger and Julio Cruz as named Plaintiffs.

4. On October 29, 2015, by stipulation of the Parties, the Complaint was amended to dismiss Brian Jurden. Jason Swiger and Julio Cruz remain named Plaintiffs.

5. On November 17, 2015, the action was transferred to the United States District Court for the Middle District of Pennsylvania and docketed at Case No. 1:15-cv-2196.

6. Consistent with the terms of the Parties’ Settlement Agreement, , and with approval of this Court, Plaintiffs’ Third Amended Complaint was filed on June 15, 2017, and it added Rule 23 Class Action claims for relief for alleged violations

of wage and hour laws in Maryland, North Carolina, Pennsylvania, and New Jersey, and added as additional named plaintiffs Julia Williams (as class representative of the Maryland class), Tom Holt (as class representative of the North Carolina class), Nicholas DeRose (as class representative of the New Jersey class), and Julio Cruz (as class representative of the Pennsylvania class).

7. Between December 2015 and January 2017, the Parties engaged in informal and formal comprehensive discovery regarding Plaintiffs' claims and Defendant's defenses to such claims. This included written discovery, including interrogatories and exchanging thousands of documents, multiple depositions, and a complete analysis of each Rule 23 Class Member's overtime damages.

8. The Parties engaged in extensive legal discussion and correspondence surrounding the Parties' positions, providing legal authority and arguments on both sides, which included numerous and lengthy discussions and written communications.

9. In February and March 2017, the Parties engaged in mediation that began at a formal mediation in New York City on February 7, 2017, with the assistance of Mediator Michael D. Young of JAMS. The mediation extended several weeks thereafter under the Mediator's auspices, which led to a proposed settlement of the Action on the terms set forth in the attached Settlement Agreement.

10. The Parties reached the proposed settlement in this matter after extensive research, discovery, legal debates, discussions, correspondence, and good faith bargaining.

11. The Parties' Motion for Preliminary Approval of Class Action Settlement was filed on April 3, 2017.

12. On June 14, 2017, this Court entered a Preliminary Order conditionally certifying the settlement class, approving the content of the notice of preliminary approval and procedure for distributing the notice, confirming the selection of a settlement administrator, appointing Julio Cruz, Julia Williams, Tom Holt, and Nicholas DeRose as Rule 23 Class Representatives, and provisionally approving the payment of attorneys' fees and expenses to Class Counsel. (Doc. No. 128).

13. On June 28, 2017, Class Counsel mailed the Class Notice to the Eligible FLSA Settlement Participants, as well as the Maryland, New Jersey, North Carolina, and Pennsylvania Class Members via First-Class Mail in the form approved by the Court, consistent with this Court's Preliminary Order.

14. North Carolina Rule 23 Class Member Mitchell C. Helms was the only Class Member to file an objection to the settlement. (Doc. No. 144.)

15. Class Counsel received one (1) request for exclusion; it was from North Carolina Rule 23 Class Member William Clary, which this Court has received and reviewed.

16. There were no objections to Class Counsels' fee request.

17. On September 12, 2017, this Court held a Final Approval Hearing, attended by counsel for the Parties.

18. The Settlement Agreement proposes to settle claims of Rule 23 Class Representatives and the proposed Classes in Pennsylvania, Maryland, North Carolina, and New Jersey. The proposed Class Settlement is subject to approval by the Court pursuant to Fed. R. Civ. P. 23(e).

19. The issues in this case were contested. A Settlement Agreement was achieved after arms-length and good faith negotiations between the Parties and their counsel, who have extensive experience litigating FLSA and various state wage and hour claims.

20. As to Rule 23 Class Representatives and the Classes they respectively represent, the Court finds that the proposed settlement classes qualify for certification under Rule 23(a) and (b)(3) and the proposed settlement qualifies for final approval under Rule 23(e). The proposed settlement classes satisfy Rule 23(a)'s requirements of commonality, numerosity, typicality, and adequacy of representation, as well as Rule 23(b)'s requirements of predominance and superiority. Rule 23 Class Representatives Julio Cruz, Julia Williams, Tom Holt, and Nicholas DeRose are adequate representatives of the respective Classes of which they are a member of and which they seek to represent, and possesses the same

interests and suffered the same alleged injuries as the other members of the classes they seek to respectively represent. The definition of the Classes encompasses persons with like factual circumstances and like claims. The foregoing paragraph of this Order is without prejudice to Defendant in any other litigation and this paragraph is not intended to bind Defendant or limit Defendant's right to contest certification in any other cases brought against Defendant.

21. The settlement payments made available to the members of the Classes are commensurate with their claims. The Court finds there is sufficient basis to conclude that the proposed settlement is fair, reasonable and adequate as to the Classes.

22. Subject to the qualification set forth in paragraph 20 regarding this Court's order not intended to be of any prejudice to Defendant in any other case, the Court certifies the Classes, pursuant to Rule 23(a) and (b)(3) as follows:

All current and former Route Sales Professionals employed by Utz Quality Foods, Inc. in Maryland, North Carolina, Pennsylvania, and New Jersey between March 1, 2014 and September 30, 2016 who have not opted-in to the pending FLSA collective action involving Defendant.

23. The Court has considered and analyzed the nine (9) specific factors in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir.1975) in assessing the fairness and reasonableness of the settlement in this action and finds that they favor approval in this matter.

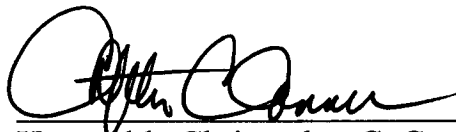
24. The Court approves Julio Cruz (for Pennsylvania), Julia Williams (for Maryland), Tom Holt (for North Carolina), and Nicholas DeRose (for New Jersey) as Rule 23 Class Representatives, and appoints as class counsel Anthony J. Lazzaro and Chastity L. Christy of The Lazzaro Law Firm, LLC and Shannon M. Draher and Hans A. Nilges of Nilges Draher, LLC.

25. The Court approves the Service Awards to Rule 23 Class Representatives in recognition of their services in this Action.

26. The Court approves the payment of attorneys' fees and expenses to Class Counsel as provided in the Settlement Agreement.

27. The Court grants final approval of the proposed settlement as to the Classes under Rule 23(e) and finds the terms of the settlement to be fair and reasonable.

IT IS SO ORDERED this 12th day of September, 2017.

A handwritten signature in black ink, appearing to read "Christopher C. Conner", written over a horizontal line.

Honorable Christopher C. Conner
United States District Chief Judge